


draft land acquisition plan

january 1981

RIO GRANDE



WILD AND SCENIC RIVER / TEXAS



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LAND ACQUISITION PLAN
RIO GRANDE WILD AND SCENIC RIVER

I. INTRODUCTION

A. National Park Service Land Acquisition Policy

The National Park Service will acquire lands and water in fee simple or less-than-fee interest within areas of the National Park System, consistent with legislation or other congressional guidelines and executive orders, to assure the protection of the natural, scenic, cultural, recreational, or other significant resources, and to provide for adequate visitor use.

B. Purpose of the Land Acquisition Plan

The purpose of the land acquisition plan for the Rio Grande Wild and Scenic River is to inform the park staff, land acquisition personnel, the affected landowners, and the general public of the National Park Service's land acquisition program for the area. The plan outlines the land acquisition program, establishes priorities for acquisition, indicates what interest is to be acquired, and identifies and defines other specifics of the land acquisition program. The land acquisition plan will be reviewed annually. In the case of major changes in the plan, property owners and members of the public will be given an opportunity to express their views in person or in writing.

C. The Rio Grande Wild and Scenic River/Land Acquisition Authority

The Wild and Scenic Rivers Act (PL 90-542, October 2, 1968) declared it to be the policy of the United States that certain selected rivers and their immediate environments, possessing outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, be preserved in free-flowing condition and protected for the benefit and enjoyment of present and future generations. Sec. 6(a) of the Act authorizes the Secretary of the Interior to acquire by donation, purchase, or exchange, lands or an interest therein within the authorized boundary of the Wild and Scenic River.

Public Law 95-625 (November 10, 1978) amends the Wild and Scenic Rivers Act by adding a segment of the Rio Grande to the system and authorizes sums not exceeding \$1,650,000 for acquisition of lands and interests in lands.

The Wild and Scenic River itself will consist of:

1. A visual corridor (lands visible from the river) with the land use restrictions necessary to preserve the scenic experience.
2. Management zones, which are areas along the river selected for access, resource protection, or increased visitor use. More restrictions can be expected on land use in these areas.

II. OVERVIEW

According to the pertinent legislation, the preservation of the free-flowing characteristic of the Rio Grande in its primitive, relatively unspoiled canyon environment, is the foremost management concern. Another important objective is to protect the numerous historical and archeological sites along the river while providing for the enjoyment and appreciation of the river and its environment by present and future generations. For these reasons, establishing an administrative interest in the Rio Grande Wild and Scenic River is one of the National Park Service's first priorities in the area.

Although the National Park Service seeks to minimize the effects of its land acquisition program on the lands and landowners adjacent to the river, the Park Service must first of all meet its legislatively mandated objectives and assure that land uses within the park boundary will be compatible with the values for which the Rio Grande Wild and Scenic River was established. Certain lands or interests in lands will be acquired by the Federal Government for public use and enjoyment and for effective administration. The Park Service must also attain suitable control over the remaining lands within the boundaries to insure that the resource values of the area are preserved and that private uses are not maintained or developed in a manner that would impair the primary purpose of the area.

In summary, the plan provides, in the case of public lands, for the attainment of a management interest in lands generally through cooperative agreements. In the case of privately owned lands, the plan provides for the attainment of a management interest in lands through easements, cooperative agreements or fee simple title through the following:

The opportunity for private individuals to own lands within the area and continue present uses the owner may have established

The opportunity for a private landowner to sell a scenic or other type of easement to the National Park Service and continue present use of all or part of the property

The opportunity for a private landowner to sell undeveloped property to the National Park Service and retain certain property rights

Purchase of land by the National Park Service in fee simple with the possibility of retained use and occupancy by the former owner

Negotiation of a cooperative agreement between the National Park Service and a private landowner

The conditions and terms under which condemnation actions can take place.

III. IDENTIFICATION OF LANDS WITHIN THE PARK

A. Public Lands

The State of Texas owns the Black Gap Wildlife Management Area (approximately 15,000 acres adjacent to the river) and other miscellaneous parcels (approximately 7,000 acres total) along the Rio Grande.

B. Private Lands

Private lands are those lands owned by one or more persons or other non-government entities, such as companies, corporations, etc.

Privately owned lands include ranches, residences, and unimproved range land. Along the banks are fishing camps, recreational shelters, and residences, with unimproved access roads. Private lands within the boundary of the Rio Grande Wild and Scenic River are designated as improved and unimproved. Unimproved lands are those vacant lands upon which no structures have been erected. Improved lands are those lands upon which some form of physical structure has been erected, such as buildings.

IV. INTERESTS TO BE ACQUIRED

A. Public Lands

Sec. 6(a) of the Wild and Scenic River Act (PL 90-542) states that any lands or interests therein owned by the State of Texas, or any political subdivision of the state, may be acquired by donation only. Sec. 10(e) authorizes the Secretary of the Interior to enter into written cooperative agreements with the governor of a state or the head of any state agency for participation in the administration of affected state lands. In the land acquisition program for the Rio Grande Wild and Scenic River cooperative management by agreement with the state will be utilized wherever possible.

B. Private Lands

1. Continuing Private Uses

In some areas it is not essential to eliminate all private uses within the boundaries. The important consideration in the land acquisition program is that certain lands be acquired by the Federal Government for public use and enjoyment and effective administration, accompanied by suitable control of the remaining lands within the boundaries to insure

that the resource values of the area are preserved and that private uses are not maintained or developed in a manner that would impair the primary purpose of the area. Examples of incompatible uses are included in Section VII, Emergency Acquisition Actions. Decisions on the compatibility or incompatibility of land uses with the resource values of the Wild and Scenic River would be made on a case-by-case basis by the Secretary of the Interior or his designated representative.

The National Park Service has no timetable to acquire all of the private lands within the area boundaries. Voluntary compliance with this plan on the part of landowners could result in continued private ownership for the foreseeable future. Private uses can also continue under many of the land protection methods discussed below.

2. Fee Simple Title

This type of acquisition transfers all the rights of ownership to the government; however, after acquisition by the government, certain development rights may be leased or sold to the previous owner or other private individuals. Such a sale or lease will be subject to terms and conditions which assure use of the property in a manner consistent with the primary purpose for which the area was established.

3. Reserved Use and Occupancy/Life Estate

Typically, as a condition of sale to the National Park Service, legal owners of record of single family non-commercial residences are permitted to reserve the use and occupancy of the dwelling, along with a designated portion of the land (usually up to 3 acres), either for a period of 25 years or less or for the life of the owner or co-owners and respective spouses.

For this right, it has been administratively determined that one percent (1%) of the negotiated amount of the reserved areas is to be deducted (in advance), at time of closing, for each year the premises is reserved. For life estates, the length of the estate is based on the life expectancy of the owner or co-owners with the longest life expectancy, and the number of years calculated by use of actuarial tables published by the Department of Health, Education and Welfare.

The one percent formula is not applicable to commercial, industrial, agricultural, ranching or similar income-producing properties. In these instances the value of the reservation is determined by the usual appraisal process.

The Park Service assumes no responsibility for maintenance or upkeep of any property subject to a reserved use and occupancy or life estate right. In historic structures, the Service may, under terms of the use and occupancy provisions, provide for preservation and general upkeep of the reserved properties.

4. Easements

Easements are restrictions that are imposed upon the land through purchase or donation. Some of the typical easements that may be acquired or accepted would include restrictions on further development or improvement, excavation, or topographic changes. Title or ownership to the property does not change or transfer to the government.

The purchase of an easement must be determined by the Secretary of the Interior or his designated representative (1) to be in the best interest of the Federal Government, (2) to insure protection of resource values, and (3) to be compatible with the purposes of the Rio Grande Wild and Scenic River. The terms of easements may vary depending upon the needs of the government and the individual landowners involved. Easements will be designed to permit existing compatible uses to continue, but prohibit uses or further development that might impair the resource values of the Wild and Scenic River. Certain easements may require the removal of improvements and/or roads.

V. PRIORITY AND METHODS OF ACQUISITION

The lands and interests in lands in the Rio Grande Wild and Scenic River will be acquired in the following general priority:

A. Visual Corridor

The visual corridor consists of lands visible from and adjacent to the river, but not included in areas to be used specifically for access or resource protection. The primary concern is to maintain a visual or scenic experience; therefore, restrictions may limit visual intrusions. Such restrictions may vary according to distance or visibility from the river that is authorized.

The visual corridor contains both private and state ownership. Easements will be adequate in most instances to meet National Park Service objectives. This area would not be designated for public access and use.

B. Management Zones

1. Access

a. La Linda Area

On the western end of the river adjacent to the boundary of Big Bend National Park, the La Linda area is a major river access area providing limited recreation activities. Most of the land is owned by the State of Texas (Black Gap Wildlife Management Area), but private land is also present. The National Park Service's interest is primarily in acquiring cooperative agreements for the state land. This area would provide access to the river for fishing, boating, and other recreational activities. There would be limited development to facilitate management and public use.

Three specific locations are identified for access to the river: Horse Canyon, Stillwell Crossing, and the bridge at La Linda. Horse Canyon is the preferred location and would require some development such as road improvement. Horse Canyon locates Rio Grande activity away from the developments presently at La Linda. Stillwell Crossing provides take-out access from upriver without going through the La Linda area. In these locations, cooperative agreements or easements are the preferred means of acquiring an interest.

b. Dryden Crossing

This area extends from Harrison Ranch to Dryden on Highway 90. It is located along the lower section of the river, and provides access to the river. It is a traditional, logical, accepted take-out point at the terminus of the usual 5- to 7-day lower canyon float trip.

The area is in private ownership. Right of way acquisition and road improvement may be needed. Cooperative agreements or easements may be possible, but purchase in fee simple may be necessary.

c. Lozier Canyon

Extending from the Foster/Cox properties to Highway 90, this area is located at the eastern end of the Wild and Scenic River and serves as a secondary point of access. Present recreational use in this part of the river is primarily fishing; floating is secondary.

This area is in private ownership. Cooperative agreement or easements may be adequate to meet Park Service objectives in this area; however, fee simple acquisition may be needed.

2. Resource Protection/Visitor Use

a. San Francisco Canyon

San Francisco Canyon has been selected as a typical tributary canyon. It is a scenic area, toward the end of the river trips possessing cultural resources which are probably significant. This area is representative of the best of the Wild and Scenic River. It is a good example of tinajas (pothole) with water upstream from the main canyon. There are opportunities here for camping, hiking, and interpretation.

The canyon contains both state and private lands. Fee simple acquisition is desirable, but less than fee, rigidly regulated, may suffice.

b. Asa Jones/Palmas Canyon Area

This area contains a fragile, historical site portraying the ingenuity of man surviving in a harsh environment. There are structures and a water system. Opportunities exist for interpretation, and there is need for protection from vandalism. The area is divided into two sections, east and west. The eastern portion includes Palmas Canyon with camping and

hiking opportunities. The land is primarily in private ownership with some state-owned lands. Cooperative agreements or easements may suffice, but fee simple acquisition with access overland may be most satisfactory.

c. Burro Bluff

A potential peregrine falcon nesting area, Burro Bluff is popular for camping, with access over private land to the top of the bluff. Restrictions may be needed to adequately protect the resource.

The land is in private ownership. Restrictive cooperative agreements or easements may suffice, but fee simple acquisition might be necessary.

3. Camping and Use Sites

The selected camping and use sites along the river are based on historical pattern, availability of potable water, and distance. These sites may provide a basis for a permit system or restrictions on either user numbers or the size of individual parties in order to manage visitor use and protect the resources.

Easements and cooperative agreements will probably meet Park Service needs and assure access to the river and use of riverfront land for hiking, fishing, and camping.

4. Visitor Contact Station

A small area at the junction of Highway 385 and Farm Road 2627 may be used for visitor contact, information, inspection of equipment, permit issuance, and an orientation of permittees. The visitor contact station would serve both Big Bend National Park and the Rio Grande Wild and Scenic River. The land is in state and private ownership.

The enclosed map represents the outer limits of the visual corridor or viewshed (gray shading). The proposed visual corridor (defined by the future boundary line would fall well within the viewshed. Also shown are the proposed management zones (black shading). Both representations are subject to revision.

VI. PROCEDURES FOR PURCHASE OF FEE OR LESS-THAN-FEE INTERESTS

The Land Acquisition Division assigned to the Southwest Regional Office is responsible for carrying out the land acquisition program. It will be guided by the land acquisition plan and by the priorities and other criteria established by the Regional Director and the Superintendent.

A. Schedule

No funds for land acquisition are currently scheduled to be available before October 1, 1981. The amount of funding available at and after that date is uncertain. Since some of the higher priority land interests may be acquired by donation or cooperative agreement, the most important

elements of the park will not be subject to funding uncertainties. The other priorities which will require funds will be phased in as soon as funds become available.

B. Acquisition of Fee Interests

The Park Service will contract for a boundary survey; a gradient boundary survey of the bank of the Rio Grande; and a survey of the boundary as it severs ownership on the inland side of the Wild and Scenic River. These surveys are a necessary prerequisite to preparing legal descriptions of the individual tracts.

The service will obtain, at its expense, a preliminary policy of title insurance for each property which will identify the owner or owners of record and all encumbrances such as mortgages, liens, judgments, and rights-of-way or other easements affecting the property's title.

1. Appraisals

Each property will be appraised by an independent contract appraiser, one who performs professional appraisal services not only for the National Park Service, but for other clients as well. The landowner or his/her representative will be offered an opportunity to accompany the appraiser on the inspection of the property in order to afford the owner an opportunity to point out significant features of the property.

To assure the quality of appraisals, a staff appraiser will review all reports for compliance with proper appraisal procedures and check such elements as the thoroughness of the research performed and whether or not the appraiser has afforded the landowner the opportunity to accompany the appraiser.

It is the policy of the National Park Service to strive for an objective estimate of fair market value which has been defined in the Uniform Appraisal Standards for Federal Land Acquisition as follows:

"The amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold in the open market by a knowledgeable seller who is willing but not obligated to sell, allowing a reasonable time to find a knowledgeable buyer who is willing but not obligated to buy."

2. Closing

As soon as possible after the appraisal of a property has been received, reviewed, and approved, the Park Service will submit to the owner, subject to the availability of funding, a written offer which will not be less than the Service's approved appraisal of the fair market value of the property. The owner will be provided with a copy of the Service's appraisal upon request. Assuming that a mutually acceptable purchase price is agreed upon, closing will be completed by a local title company acting as escrow and closing agent within 6 weeks of signature by the owner and the Service of an Offer to Sell.

Unless the Service has a very unusual possession requirement, owners will be given at least 90 days to move. Under no circumstances will owners have to leave before they are paid for their properties.

The Service can pay for most, if not all, of what it may cost to convey the title to the real estate to the government. The Service can compensate owners for these title conveying costs:

1. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property.
2. Penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.
3. The pro rate portion of real property taxes the owner paid to cover the period after title was vested in the United States.

The Service can pay other similar expenses to the extent they are fair and reasonable, but the Service will not pay for costs necessary to clear defects in title to the property.

3. Condemnation

In those few cases where it is not possible to reach an agreement with an owner, it may be necessary for the government to institute eminent domain proceedings. Condemnation is regarded by the National Park Service as a last resort. The Park Service will make every effort to seek negotiated settlement wherever possible before initiation of such an action.

Condemnations initiated by the filing of a complaint in Federal Court are used in most eminent domain cases requested by the National Park Service. In these situations title to the land does not pass to the Government until the court or jury has determined the amount of just compensation and this amount has been paid to the owner. Condemnation also may be employed by the Service to determine title issues or when an owner willingly agrees to acquisition by the Federal Government, but wishes the courts to determine the value of the property.

Declarations of taking are typically used where title to the land must be vested in the United States immediately in order to prevent resource damage.

A declaration of taking vests title to property in the United States immediately upon filing papers in the court and the deposit of an estimate of just compensation. Section VII, Emergency Acquisition Actions, contains more information on condemnation.

C. Acquisition of Less-Than-Fee Interests

The procedure for acquiring less-than-fee interests is the same as that described above for acquisition of fee interests except for the fact

that the owner does not relinquish title and possession of the property, but rather he or she and successors and assigns have relinquished certain rights to use the property in specific ways. The fair market value of a less-than-fee interest is estimated by comparing the estimated value of the property unencumbered by restrictions (the "before" value) with the reduced estimated value encumbered with the restrictions (the "after" value). The difference is the estimated fair market value of the less-than-fee interest. This less-than-fee interest is normally referred to as an easement and remains with the land into perpetuity.

VII. EMERGENCY ACQUISITION ACTIONS

Subject to availability of funds, the National Park Service will immediately acquire an interest--through negotiation or the filing of a Declaration of Taking--and pay just compensation for any tract where proposed use or development could significantly damage the Wild and Scenic River resources or is incompatible with area values. The following actions or proposed actions are examples of incompatible uses:

1. Construction of buildings or other improvement
2. Intensification of use on developed or undeveloped land, including the introduction of mining, harvesting of timber, and installation/occupancy of house trailers or modular house units
3. Subdivision or selling off of a portion of an ownership with intent to develop or change the use in a manner which would be viewed as an incompatible use
4. Any action that produces a clear, documentable increase in damage to natural or cultural resources, wildlife or scenery, including topographic changes or disruption of natural drainage patterns
5. Introduction of commercial use on land used for noncommercial purposes
6. Intensification of commercial use on land used for commercial purposes
7. Creation of hazards that endanger park visitors, other members of the public, or wildlife
8. Major alterations to existing structures or new construction, including: (a) new separate residence, (b) new residence which is physically linked to an existing structure, (c) replacement of structure with a new one that is substantially different in size, location, or purpose, or (d) conversion of existing non-residential structure to sleeping or living quarters.

VIII. SALVAGE

During negotiations landowners will be given an opportunity to salvage non-historic buildings and other structures located on property which is conveyed to the government in fee simple title. The National Park Service will ascertain prior to negotiations whether or not a building or structure which a landowner has identified for salvage possesses any historic value. A charge is usually made for the salvage of a building or structure. The value of the salvage rights will usually be available during negotiation. The monetary consideration for salvage rights will be deducted from the proceeds of the sale, but the landowner must choose what is to be salvaged prior to execution of the agreement to sell. Any salvaged structures must be relocated to a site outside of the national river boundaries, within a specified time limit. Any structures selected for salvage but not removed within the specified time limit will be considered abandoned.

IX. RELOCATION

Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, entitled landowners, tenants and others to certain payments provided they are displaced by a Federal land acquisition program. The types of entitlements are housing differential, moving expenses and other incidental expenses involved in relocation. Any person lawfully occupying a dwelling shall be given at least a ninety-day advance written notice of the date by which he shall be required to relocate.

There are specific limits to the amounts of relocation payments. These payments are in addition to the price paid to the landowner for the land and improvements. Public Law 91-646 describes the entitlements and prerequisites required to establish eligibility. Part 114-50, IPMR's, provides the detailed instructions for computing entitlements. In order to be eligible for a housing cost differential, a displaced person must purchase and occupy a replacement dwelling no later than one year from the date on which he receives final payment for his property, or from the date he moves from the Government-acquired dwelling, whichever is later. The displaced person has an additional eighteen (18) months in which to file relocation claims with the Land Acquisition Officer.

Conditions of
Rights of Use and Occupancy of
Single-Family Noncommercial Property

1. Definitions. Within the meaning of this instrument, "single-family non-commercial residential purposes" is occupancy of the reserved premises solely as a residence by any owner or owners having attained the age of eighteen on the date of the acquisition of the herein described property. "The Reservoir" is the person or persons conveying the land covered by this instrument to the United States and reserving a right of use and occupancy.
2. Use. The reserved premises shall be used only for noncommercial residential purposes. The reserved premises shall not be used for any commercial, industrial, mining or similar use, or for the accommodation of any paying guests for a period of less than 90 days. The Reservoir in the use of the premises shall conform to all applicable laws, ordinances, and regulations in effect in the area, including but not limited to all applicable general National Park Service regulations and special regulations for the area in particular.
3. Preservation. The Reservoir shall not add to or materially alter the character of existing improvements or structures or perform any new construction or change the topography of the land without first having obtained the permission in writing of the National Park Service. Any building or structure damaged or destroyed by fire or other casualty or deteriorated by the elements or wear and tear may be maintained, repaired, renovated, remodeled, or reconstructed as long as the basic character of the building or structure is not materially altered.
4. Maintenance of reserved premises. The Reservoir shall keep the grounds of the reserved premises in a clean and neat condition and shall maintain all structures and improvements in good repair. The Reservoir is responsible for all costs arising out of the reserved premises, including all costs of maintenance and repair and all utility charges. The United States has no responsibility for any charges or expenses in connection with the reserved premises.
5. Precautions. The Reservoir shall take reasonable care to avoid damage to adjacent or nearby Federal lands or property through the spread of fire originating on the reserved premises, through the spread of sewage or other polluting substances originating on the reserved premises, or by any other activities representing a nuisance or hazard to adjacent or nearby Federal lands or property.
6. Taxes. The Reservoir is responsible for the payment of any taxes or assessments that may be levied against his interest in the reserved premises.

7. Liability. The Reservoir shall hold the United States harmless for any liability arising out of the use of the reserved premises by the Reservoir. The Reservoir shall at his expense carry such public liability insurance as is customary by homeowners in the vicinity, providing such insurance is available.
8. Insurance. The Reservoir is responsible for insuring his interest in the reserved premises.
9. Transfer. The reserved premises may be conveyed or subleased for not less than 90 days by the Reservoir or his successors or assigns provided the instrument of conveyance or sublease imposes on the new Reservoir all of the restrictions and requirements of these provisions. A copy of any such conveyance or sublease shall be furnished the National Park Service prior to the effective date of such conveyance.
10. Expiration of term. The Reservoir shall peacefully relinquish possession and control of the reserved premises upon the expiration of the term of the right of use and occupancy. He shall not remove any structures or other improvements which are permanently affixed to the realty unless proper arrangements, with adequate consideration for such removal, have been made with the National Park Service. Any personal property left on the reserved premises upon the expiration of the term may be disposed of by the National Park Service.
11. Waiver of replacement housing benefits. The Reservoir fully understands that by reserving the right of use and occupancy reserved herein he waives replacement housing benefits under Sections 203, 204, 205, and 206 of Public Law 91-646.



